

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ABINGDON DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,) Criminal Case No.
) 1:17-cr-00027-JPJ-PMS-1
vs.)
)
JOEL A. SMITHERS,) **TESTIMONY OF LORA**
) **KICKLIGHTER ONLY**
Defendant.)

PARTIAL TRANSCRIPT OF JURY TRIAL - DAY 3
HONORABLE JUDGE JAMES P. JONES PRESIDING
WEDNESDAY, MAY 1, 2019

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Proceedings taken by Certified Court Reporter and transcribed
using Computer-Aided Transcription

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1 (Requested transcript of Lora Kicklighter only of the
2 proceedings commenced at 9:08 a.m.)

3 THE COURT: Good morning, ladies and gentlemen.
4 Good to see you this morning. Hope you had a good evening.
5 We're ready to go.

6 And, Mr. Lee, you may call your next witness.

7 MR. LEE: Thank you, Judge.

8 Your Honor, the Government calls Lora Kicklighter.

9 THE CLERK: If you'll raise your right hand.

10 Do you solemnly swear that the testimony you're
11 about to give in this case shall be the truth, the whole
12 truth, and nothing but the truth, so help you God?

13 THE WITNESS: Yes, I do.

14 **LORA KICKLIGHTER,**

15 Called as a witness herein by the Government, having been
16 first duly sworn, was examined and testified as follows:

17 **DIRECT EXAMINATION**

18 BY MR. LEE:

19 Q. Good morning.

20 A. Good morning.

21 Q. Ma'am, it's difficult to hear in here. So I'm going to
22 ask you to pull over -- pull that microphone over. Try to
23 speak directly into it.

24 A. That better?

25 Q. It is better, thank you.

1 Would you please introduce yourself to the members
2 of the jury.

3 A. My name is Lora Kicklighter.

4 Q. And for the purposes of the court reporter, could you
5 spell your last name.

6 A. K-i-c-k-l-i-g-h-t-e-r.

7 Q. Ms. Kicklighter, what community have you been residing in
8 most of your life?

9 A. West Virginia.

10 Q. Whereabouts?

11 A. In Nicholas County -- Nicholas County and Fayette County.

12 Q. Okay. It's pretty obvious, Ms. Kicklighter, you're in
13 custody now, aren't you?

14 A. Yes, sir.

15 Q. And are you serving an active federal sentence based upon
16 a felony conviction?

17 A. Yes, sir.

18 Q. What sentence are you serving?

19 A. Time-wise?

20 Q. Yes.

21 A. 57 months.

22 Q. So just under five years.

23 A. Yes.

24 Q. Was that pursuant to a plea of guilty to a charge of
25 conspiracy to distribute oxycodone?

1 A. Yes.

2 MR. LEE: Your Honor, may I approach the witness?

3 THE COURT: You may.

4 BY MR. LEE:

5 Q. Ms. Kicklighter, I'm going to hand you what's been marked
6 as Government's Exhibit 97. Do you recognize what that is?

7 A. Yes.

8 Q. What is that?

9 A. This is my plea agreement that I signed.

10 Q. All right. And is that from the Eastern District of
11 Kentucky?

12 A. Yes.

13 Q. All right.

14 MR. LEE: Your Honor, I move for the admission of
15 Government's Exhibit 97.

16 THE COURT: It will be admitted.

17 (Government's Exhibit 97 received.)

18 BY MR. LEE:

19 Q. While we're working on getting the technology, we'll talk
20 about your plea agreement a little bit; okay?

21 A. Okay.

22 Q. So you've already been sentenced in the Eastern District
23 of Kentucky and are serving your sentence; correct?

24 A. Yes, sir.

25 Q. All right. Have you been promised anything for your

1 cooperation today?

2 A. No.

3 Q. Are you expecting any sort of consideration or benefit
4 from your cooperation?

5 A. No, none whatsoever.

6 Q. All right. Are you familiar with what a Rule 35 motion
7 for downward departure or for reduced sentence is?

8 A. No.

9 Q. Okay. Are you aware that at times, if you cooperate with
10 the Government, even after you've been sentenced, that your
11 sentence can be reduced if the judge in your case decides it's
12 appropriate?

13 A. Yes, sir.

14 Q. Okay. Are you hoping that that happens based upon your
15 testimony today?

16 A. Well, yeah. I mean, nobody wants to be locked up. But I
17 hope it helps, you know, a bigger way.

18 Q. Okay. In fact, you've got some programs that are at the
19 federal correctional institution that you're sentenced to that
20 you want to pursue that will take up a vast majority of the
21 time that you're supposed to spend in prison; is that correct?

22 A. Yes.

23 Q. And what are those programs?

24 A. Right now -- I was about to start RDAP. It's a
25 residential drug treatment program. It takes ten months, or

1 900 hours. You can get upwards of 12 months off your
2 sentence, six months' half-way time. But I've been delayed on
3 that, so -- to come here. But, yeah, so I'm hoping to get
4 back and do that program.

5 Q. Okay. But, fair to say, even though nothing has been
6 promised to you, you've already been sentenced, if you get a
7 reduction for your cooperation, that's something you would be
8 happy about; correct?

9 A. Oh, yes. Yes.

10 Q. All right. Do you know what could derail any chance of
11 getting any sort of reduction or any sort of benefit from your
12 cooperation?

13 A. No.

14 Q. What about telling a lie or not being truthful today?

15 A. I'm really not familiar with -- I mean. I mean, I'm sure
16 it would be some kind of trouble, you know, you have to be
17 truthful. So I'm just here to tell the truth, you know.

18 Q. Fair to say, common sense, if you don't tell the truth
19 when you're testifying today, there's no chance you're going
20 to get anything. In fact, you might get in more trouble.

21 A. Right. Yeah. And I don't want that.

22 Q. Okay. Ms. Kicklighter, your plea agreement details the
23 conduct that you were involved in that led to your charges; is
24 that correct?

25 A. Yes.

1 Q. In fact, it specifically discusses that between June and
2 July -- June of 2015 and July of 2016 you were involved with
3 Darryl Williams in operating crews to travel to see
4 Dr. Smithers to get oxycodone; is that correct?

5 A. Yes, sir.

6 Q. And that you chose or you went to Dr. Smithers because
7 patients received large prescriptions for oxycodone and other
8 controlled substances with little, if any, physical
9 examination or other type of subjective testing measures?

10 THE COURT: Yes, sir.

11 MR. WILLIAMS: I would object to speculation. I
12 think, unless she has personal knowledge of anything other
13 than her own self, I certainly would object to her speculating
14 what anybody else might have done or whether it would be
15 hearsay testimony she would be speaking on; somebody speaking
16 to her.

17 THE COURT: Well, Mr. Lee, maybe you better --
18 rather than relying on what it says in the plea agreement, ask
19 the witness herself what -- what on facts she was doing.

20 MR. LEE: I'll afford documents, Your Honor. But
21 I'll lay a foundation if the Court would prefer that.

22 BY MR. LEE:

23 Q. Ms. Kicklighter, I guess just to get right to the heart
24 of the matter, what was the criminal conduct that you pled --
25 that caused you to plead guilty? What did you do to get your

1 charges and that led you to plead guilty?

2 A. I participated in going to a doctor that -- for starters,
3 the reason I went is because I knew, you know, you could get
4 strong medication without having an MRI or any of that stuff.
5 It's kind of like the way they did in Florida a few years back
6 with what we call the pill mills. I went and got medication
7 without -- I mean, without any kind of physical exam or
8 bringing medical records, anything like that, and got a
9 prescription for pain pills. I'm an addict, so that's why I
10 went, because I knew I could get opiates.

11 Q. And who was that doctor?

12 A. Dr. Joel Smithers.

13 Q. Is he in the courtroom today?

14 A. Yes, sir.

15 Q. Can you please identify him for the jury and identify
16 what he's wearing.

17 A. Yes. He has a gray suit and a blue tie.

18 Q. And is he seated at the counsel -- which counsel table is
19 he seated at? The one to your left or the one to your right?

20 A. The one to my right.

21 MR. LEE: Your Honor, I'd ask the record reflect
22 she's identified the defendant.

23 THE COURT: It will so reflect.

24 BY MR. LEE:

25 Q. And, Ms. Kicklighter, during the time you were going to

1 see Dr. Smithers, were you the only one that was going that
2 you were associating with or were there more people?

3 A. Do you mean physically I was by myself? Is that what
4 you're asking?

5 Q. Well, let me rephrase the question.

6 A. Okay.

7 Q. You're from a community in West Virginia; is that
8 correct?

9 A. Yes. I was living in Kentucky when I went to
10 Dr. Smithers.

11 Q. Okay. What part of Kentucky were you living?

12 A. Pike County, Eastern District.

13 Q. And were you married at the time?

14 A. No.

15 Q. Did you have a boyfriend?

16 A. Yes.

17 Q. Who was your boyfriend?

18 A. Darryl Williams.

19 Q. Okay. Did you and Darryl Williams facilitate other
20 people going to see Dr. Smithers to obtain prescriptions?

21 A. Yes.

22 Q. And how many other people were there?

23 A. I didn't know everybody that was going. I didn't know
24 the whole extent of it, but I knew there was probably more
25 than 20 people going.

1 Q. Okay. What were the names of some of those people?

2 A. Michael Bowe, Michael Robinette. It's been so long, I
3 forget. Sam Hubbard. There was just so many. Everybody that
4 I met and knew pretty much in that area was going.

5 Q. Okay. And how did -- or what was the arrangements
6 between those people who were going to see Dr. Smithers and
7 yourself or Darryl Williams?

8 A. Darryl would pay for everything; the doctor visit, having
9 the medication filled, the trip, any kind of expenses. And
10 then when the prescriptions were filled, Darryl would receive
11 half of them and then they would have the other half for
12 payment for paying for everything. Except for me. I
13 didn't -- you know, I was just doing it to feed my habit, you
14 know, so.

15 Q. And what was Darryl doing with the pills?

16 A. Selling them.

17 Q. How did you -- I know you said you were familiar with
18 other -- I think what you called pill mills; is that right?

19 A. Mm-hmm. That's what they were called, yes.

20 Q. Okay. In fact, you've had a long history of drug abuse?

21 A. Yes.

22 Q. And you've been convicted in the past of other
23 drug-related offenses; is that correct?

24 A. I've been charged, not convicted. This is the first time
25 I've been convicted.

1 Q. Okay. You were charged in Florida back in 2010 with drug
2 offenses there; is that correct?

3 A. Yes, sir.

4 Q. Okay. Those involved prescription fraud and opiates; is
5 that correct?

6 A. Yes, sir.

7 Q. Was that based upon your involvement with the pill mill
8 in Florida?

9 A. Yes.

10 Q. Okay.

11 A. It was -- it was really easy to go down there and go to a
12 doctor office that would write prescriptions. And normally
13 you would get them filled at the pharmacy in the same
14 building.

15 Q. Okay. And you said you had a drug addiction when you
16 sought out Dr. Smithers's office; correct?

17 A. Yes.

18 Q. Okay. How did you find out about Dr. Smithers's office?

19 A. Someone had told -- someone had found out about it and
20 told Darryl. And so he went. And then he seen that it was,
21 like, the run of the mill kind of thing, you just --

22 MR. WILLIAMS: Your Honor -- sorry. I would have an
23 objection to speculation what Darryl Williams knew or was
24 thinking.

25 MR. LEE: I'll rephrase the question, Your Honor.

1 THE COURT: All right.

2 BY MR. LEE:

3 Q. And did Darryl Williams tell you about his experience at
4 Dr. Smithers's office and what he wanted to do once he'd
5 identified Dr. Smithers?

6 A. Yes.

7 Q. Okay. What did he tell you?

8 MR. WILLIAMS: Your Honor, if I might, I might
9 object as to hearsay with respect to that.

10 MR. LEE: If I may, Your Honor, I believe this is a
11 statement in furtherance of a conspiracy made by a
12 co-conspirator.

13 THE COURT: Very well. I will admit it on that
14 basis and overrule the objection.

15 BY MR. LEE:

16 Q. My question was: What did Darryl tell you about his
17 experience at Dr. Smithers's and what he wanted to do moving
18 forward?

19 A. He said that that's a good doctor. You know, all we have
20 to do is pay the money, he'll write good scripts. You don't
21 even have to have a MRI or medical records or anything. It's
22 not like -- in these circumstances it's not like you look in
23 the yellow pages to find a doctor for what you need treated
24 for, it's word of mouth. You know, people go and that's
25 how -- but, yeah, he said, you know, we could start going to

1 this doctor. He's just getting started. He was in Beaver,
2 West Virginia. So the next month I went.

3 Q. All right. Let me backup a little bit. You talk about
4 for this kind of a doctor you can't find it in the yellow
5 pages, you're looking for word of mouth. What were you
6 looking to get from a doctor such as Dr. Smithers?

7 A. Pain pills, opiates, roxies. You didn't want to get,
8 like, the weaker pills, the hydrocodones, because at that
9 point everybody was already past those, and doctors were
10 writing a lot stronger medication.

11 Q. Okay. When you say "word of mouth," what types of people
12 were talking about Dr. Smithers or doctors like him?

13 A. Addicts.

14 Q. And, as far as seeking treatment, were you seeking any
15 treatment for any medical issue from Dr. Smithers?

16 A. At that time I was just hoping to get a prescription of
17 pills to feed my habit. I was more trying to feed my habit
18 than, you know, get treatment for any -- I mean, I had, like,
19 some nerve damage. But I found out since then that I can stop
20 the pain by simply stretches, you know, so.

21 Q. Are you on any opiates now?

22 A. No. No. Not since June 2016.

23 Q. And who -- how did you find out that stretching would
24 take away whatever pain you've had?

25 A. It was actually a doctor at a pill mill.

1 Q. Okay.

2 A. That, you know -- because I told him, I said, you know,
3 even though I'm taking such strong opiates, I still have pain.
4 And he showed me a stretch that I could do. And I still do it
5 today when my leg starts to hurt.

6 Q. What doctor was that?

7 A. I don't remember. It's, you know -- I mean, like I said,
8 I've been abusing opiates since 2003.

9 Q. Okay. And we'll talk more about the doctors that you've
10 been to in a minute.

11 So, you said the first time you went to see
12 Dr. Smithers was in Beaver, West Virginia?

13 A. Yes, sir.

14 Q. What was the name of the clinic there, if you can recall?

15 A. I don't think it had a name. It was on Airport Road.
16 And it was just a brick building, kind of looked like nothing
17 was there.

18 Q. Describe your first appointment with Dr. Smithers. What
19 happened?

20 A. I walked in and it had a, you know, a waiting room and,
21 like, a receptionist area, but there was no receptionist. So
22 Darryl told me just to go in and, you know, sit down. And
23 then I was waiting. At that time Dr. Smithers come out, asked
24 me my name, and then we went back in the office, talked a
25 little bit about what was wrong with me. And I specifically

1 wanted a pain pill called "Opanas," which are like the
2 strongest ones on the market right now. And he said that he
3 could write me roxies right now and then when we had a
4 better-established relationship he could write me the Opanas.

5 I didn't have any medical records with me, no MRI,
6 nothing, because I already was told I don't need any of that.
7 So it was, you know, it -- you know, you could just tell.
8 When you've been to different pill mills and stuff, you could
9 just tell how it was. So it was easy to get a prescription.

10 Q. And you said that was in Beaver, West Virginia?

11 A. Mm-hmm.

12 Q. Where was your next appointment with Dr. Smithers?

13 A. Martinsville, Virginia.

14 Q. Okay. Do you know why the clinic -- why you originally
15 went to Beaver, West Virginia, then all of a sudden had to go
16 to Martinsville?

17 A. Given my past experience with doctors that -- you know,
18 you could show -- one month you can go, and you can show up
19 the next month for the appointment and they're closed down --

20 MR. WILLIAMS: Your Honor, I'd have an objection. I
21 think she's -- I think if she testifies to personal knowledge.
22 But I think if she's saying that she typically understands
23 this might be something, I don't think that would be
24 admissible. I think that's speculation.

25 THE COURT: She said, "Given my past experience with

1 doctors." That's how she started her phrase.

2 MR. WILLIAMS: What I'm saying is, I think that
3 that's indicating that she doesn't have a personal knowledge
4 of why Dr. Smithers left. She would be basing it on some kind
5 of a past history which --

6 THE COURT: Well, I'll overrule the objection.

7 Go ahead.

8 BY MR. LEE:

9 Q. Please continue.

10 A. We were -- most doctors, if -- what the terminology we
11 use, if it gets a little hot for them, they move locations.
12 And that's just what everybody assumed. I mean, every pain
13 doctor or pill mill that I have been to has been shut down.
14 And, you know, like I said, you just show up and there's
15 nobody there.

16 Q. How -- okay. How did you find out that Dr. Smithers had
17 moved to Martinsville?

18 A. He -- he told some of the patients that had -- you know,
19 that was going that the next visit would be in Martinsville,
20 Virginia.

21 Q. Okay. So y'all just -- how did you know where to go or
22 how to get an appointment?

23 A. Darryl had the address. I think Dr. Smithers had maybe
24 text him the address or -- so.

25 Q. Okay. When you went to Dr. Smithers's office in

1 Martinsville for that next visit, did -- what happened?

2 A. I guess our relationship was a little more established,
3 because he wrote me the roxy 30s and also 90 Opana 40s.

4 Q. You said that was, in your experience, basically the
5 strongest opiates you could get?

6 A. Yeah.

7 Q. Okay. And when you specifically asked Dr. Smithers at
8 that first visit for him to write the strongest opiate you
9 could get, did he question your motives or go into any
10 problems there might be with you asking for that out of the
11 blue?

12 A. No. He just said that he couldn't write 'em on our first
13 visit, but after we got our relationship a little more
14 established -- and what I assumed was that I had to go to him
15 a couple times before, you know, I could get what I consider
16 the good pills at that time.

17 Q. Okay. Did you ever have trouble filling your
18 prescriptions --

19 A. Yes.

20 Q. -- that were written by Dr. Smithers?

21 A. Yeah. That's always kind of a hang up. And it --
22 Dr. Smithers had text different pharmacies to our phone and
23 recommend that we could go to.

24 Q. And what pharmacies were those?

25 A. They were, like, your independent -- you know, not like

1 CVS or Rite-Aid or anything. They were -- one was in Buffalo,
2 West Virginia. It was called Buffalo Pharmacy. There was
3 another one in West Virginia that I went to a lot. Poca. I
4 think it's called Poca Drugs. When you find a pharmacy that,
5 you know, they want cash, then you know that's a pharmacy
6 that'll fill without questioning. Except for Buffalo.
7 Buffalo, if you'd come in with a prescription for 90 Opanas,
8 he would only give you 60 of 'em, but they would charge you
9 the \$1400 for 90 of 'em.

10 Q. Okay. So the pharmacy would charge you for the full
11 prescription, but they'd short you 30 pills?

12 A. Yeah.

13 Q. Do you know what they were doing with the other 30 pills?
14 And I don't want to you assume or speculate, just if
15 you know.

16 A. Right. First-hand knowledge, I don't know. But I had
17 heard that, you know, that they were --

18 THE COURT: Don't testify to what you heard.

19 THE WITNESS: Okay. No, I don't know.

20 BY MR. LEE:

21 Q. Okay. And you said for those -- those types of
22 pharmacies that wouldn't question your prescription, wouldn't
23 question where you were from and would fill Dr. Smithers's
24 prescriptions, they were all cash; is that correct?

25 A. Mm-hmm. Yes.

1 Q. Okay. And Dr. Smithers, how did you have to pay him?

2 A. Cash.

3 Q. Okay. Did he also take credit cards?

4 A. Yeah. Credit cards or cash.

5 Q. Would he allow insurance? Medicaid? Anything like that?

6 A. Not that I was aware of.

7 Q. And as things progressed through the next year, in
8 essence, June to July of '16 -- June of '15 to July '16, just
9 tell the members of the jury how things would operate with
10 Darryl and you and the crew of folks that were going to
11 Dr. Smithers.

12 A. Well, they would -- there would be several people going
13 at one time to the doctor. And then they would come back, and
14 they would bring Darryl the prescriptions. Darryl would send
15 one of our other co-defendants to the pharmacy and get them
16 all filled, then they would bring the prescriptions back to
17 Darryl filled. And then the people that the prescriptions
18 were for would get half of the medication and Darryl would
19 keep the other half.

20 There were also, I believe, a couple months that
21 nobody had to go to the doctor. Dr. Smithers told us that he
22 was having repairs done on the roof of his building, so he
23 actually mailed prescriptions two different times to our
24 house, and you didn't even have to go to the doctor. So that
25 was, you know, that was really convenient.

1 Q. Did you still have to pay the \$300 office visit for each
2 of those prescriptions to get mailed?

3 A. Yes.

4 Q. And when Dr. Smithers would mail prescriptions to your
5 house, was it just your prescription and Darryl's or were
6 there other prescriptions?

7 A. Oh, no, it was whoever had appointments. It would be
8 quite a bit of them. You know, several people.

9 Q. Like six, seven different people's prescriptions would
10 all just get mailed to your house?

11 A. Yeah.

12 Q. And how would you pay Dr. Smithers if you weren't even
13 going to your visits?

14 A. Darryl would either send one of our co-defendants to
15 MoneyGram the money to them or call and do a prepaid credit
16 card over the phone to pay for the visits.

17 Q. Okay. And who would organize these trips of the crew to
18 Dr. Smithers's office? Was it Dr. Smithers? Was it Darryl?
19 How would that happen?

20 A. Darryl would call and say -- tell Dr. Smithers, I've got
21 so many coming tomorrow, you know, a day in advance. And they
22 just kept -- they corresponded, you know, between each other
23 to let him know.

24 Q. Okay. Did you also go to a pharmacy known as Mike's Best
25 Practices in Wytheville?

1 A. Yes. That was -- yeah, that was -- I think that that was
2 maybe the last pharmacy that I went to, the last time that I
3 went maybe. It was -- Dr. Smithers had text my phone after
4 I'd left the office with Mike's Pharmacy and the address.

5 Q. Did he tell you why you needed to go there?

6 A. Because it was already cleared that he would fill the
7 prescriptions.

8 Q. Do you know who worked that out?

9 A. I do not.

10 Q. At some point, you and Darryl got, in essence, busted by
11 the DEA; is that correct?

12 A. Yes.

13 Q. And you began to cooperate with the DEA investigating
14 Dr. Smithers; is that correct?

15 A. Yes.

16 Q. Do you remember approximately when that was?

17 A. June, maybe, of -- May or June of 2016.

18 Q. And what did you do to assist the investigation?

19 A. I called -- I made a phone call that was recorded. I was
20 with the DEA agents, and I called Dr. Smithers, and I paid
21 for, I want to say, maybe four visits over the phone with
22 three different credit cards that the DEA agents had gave to
23 me.

24 Q. If I told you that occurred on or about July the 19th of
25 2016, does that sound about right?

1 A. Yeah, it does.

2 Q. And you made a recorded phone call to Dr. Smithers on
3 that day; is that correct?

4 A. Yes.

5 Q. Have you had a chance to listen to that phone call --

6 A. Yes.

7 Q. -- prior to today?

8 A. Yes.

9 Q. And does that recording accurately reflect the
10 conversation that you had with the defendant, Dr. Smithers?

11 A. Yes.

12 MR. LEE: Your Honor, at this time I'd move for the
13 introduction of Government's Exhibit 48, which is a recording
14 of that phone conversation between the defendant and the
15 witness, Ms. Kicklighter.

16 THE COURT: It will be admitted.

17 (Government's Exhibit 48 received.)

18 THE COURT: Is that on a disk?

19 MR. LEE: I believe it has been already turned over
20 on the thumb drive previously provided.

21 THE COURT: All right. Very well, you may proceed.

22 MR. LEE: Your Honor, I'd like to play that. There
23 is an audio recording and a transcript that is also played.

24 THE COURT: All right. Ladies and gentlemen, you're
25 going to see on this recording on your TV monitor the words.

1 But I need to caution you that the real evidence is what you
2 hear. And if you hear something different than what is
3 written, then you have to rely on what you hear. The words
4 are just merely for your convenience. But it's -- the
5 evidence itself is the sound that you hear.

6 You may proceed.

7 MR. LEE: Ms. Vogt.

8 (Audio played.)

9 BY MR. LEE:

10 Q. Was that on the phone conversation that you had with
11 Dr. Smithers?

12 A. Yes, sir.

13 Q. Okay. If I told you that that actually occurred on July
14 18th of 2016, as opposed to the 19th, do you disagree with
15 that?

16 A. No, that's right.

17 Q. Okay.

18 A. Yes.

19 MR. LEE: Now, Ms. Vogt, if you could pull up LK,
20 page 6, Ms. Kicklighter's patient file, please.

21 Which is Government's Exhibit LK.

22 BY MR. LEE:

23 Q. Ms. Kicklighter, do you recognize what that is on the
24 screen in front of you?

25 A. Yes.

1 Q. Okay. What is that?

2 A. That's a discharge notice from Dr. Smithers's office.

3 Q. Okay. It means you've been kicked out as a patient;
4 right?

5 A. Mm-hmm.

6 Q. Okay. The date you were kicked out, July the 5th of
7 2016; correct?

8 A. Yes.

9 Q. So approximately two weeks before you made that phone
10 call to Dr. Smithers to pay for five patients' visits, you'd
11 been kicked out of his practice for using cocaine.

12 A. Yes.

13 Q. Was Darryl Williams even a patient in July of 2016?

14 A. I think he had already been discharged.

15 Q. He'd been kicked out too, hadn't he?

16 A. I believe so, yes.

17 Q. For using some kind of drugs that he wasn't supposed to
18 be using; right?

19 A. Right.

20 Q. All right. If I told you that he was kicked out in May
21 of 2016, would that sound accurate?

22 A. Yes, as far as I can remember.

23 Q. Okay. So, on July the 18th of 2016 when you and Darryl
24 Williams paid \$1200 to Dr. Smithers for five patients to get
25 prescriptions from him, you both had been kicked out of the

1 practice; correct?

2 A. Yes.

3 MR. LEE: Thank you, Ms. Vogt.

4 BY MR. LEE:

5 Q. The pills that Darryl was selling that those five
6 patients got on that day and then the other patients had
7 gotten, along with yourself, for at least the previous year,
8 how much would they sell for on the street?

9 A. The Opanas would sell for \$100 a piece. The roxies would
10 sell, I think, anywhere from 30 to \$50 a piece.

11 Q. And the MS Contin? Did you ever get Hydromorphone?

12 A. No, I never received those. I'm not sure.

13 Q. So you were just receiving oxycodone and Opana?

14 A. I got oxycodone for a couple months, and then I was --
15 that prescription got taken away, so then I only received the
16 Opana 40s for the rest of the time.

17 Q. Okay. I think you used some terminology that you're
18 familiar with and I'm familiar with but the jury may not be
19 familiar with. You mentioned roxies, what's a roxy?

20 A. It's Roxicodone, 30 milligrams. That's what -- they're
21 either called Roxicodones or oxycodones, but it's the same
22 medicine.

23 Q. Okay. All right.

24 MR. LEE: If I could direct Ms. Vogt to page 37 of
25 Government's Exhibit LK.

1 MS. VOGT: What pages?

2 MR. LEE: 37, please.

3 BY MR. LEE:

4 Q. Now, Ms. Kicklighter, had you discussed that you'd been
5 in trouble for drugs previously with Dr. Smithers?

6 A. I don't -- I don't remember if I did or not.

7 Q. Did he or somebody in his practice tell you that they
8 were going to do a criminal background check of you when you
9 became a patient?

10 A. Maybe towards the end. There had been somebody new hired
11 in the office that would do, like, you know, would bring you
12 in and you would pay him and then he would see -- you know,
13 kind of like when you go to a regular -- I used the term
14 "regular doctor," like, they take your vitals and all that and
15 then you'd wait and then you'd see the doctor. But he -- we
16 would pay him.

17 Q. Okay. Who was that person?

18 A. I can't -- it's hard for me to remember. Wendell.

19 Q. Wendell Wilson?

20 A. Yes, Wendell Wilson. And he was -- as far as I know, he
21 was an ex-state trooper, I think, from Tennessee maybe.

22 Q. Okay.

23 A. And he still lived in Tennessee, but he came to
24 Martinsville to work at Dr. Smithers's office.

25 Q. Okay. I'm showing you page 37.

1 MR. LEE: Ms. Vogt, if you could blow up down to the
2 bottom. Yes.

3 BY MR. LEE:

4 Q. Page 37 of your patient file. This appears to be some
5 sort of background criminal history check of you. Your name's
6 at the top; correct?

7 A. Yes.

8 Q. And that's your identifying information; your date of
9 birth, your address, et cetera; is that correct?

10 A. Yes.

11 Q. Okay. And it shows that you had previously been charged
12 with withholding information to obtain a controlled substance
13 or prescription, and trafficking in illegal drugs; is that
14 correct?

15 A. Yes.

16 Q. Okay. And then do you recognize whose signature that is
17 right there (indicating)?

18 A. I believe it's Dr. Smithers's.

19 Q. Okay. And it indicates he knew that and -- at least when
20 the date on the form is, in November of 2015; correct?

21 A. Yes.

22 Q. So he knew in November, at minimum, that you had had
23 prior charges for prescription fraud and drug distribution.

24 A. Yes.

25 Q. I also want to direct your attention -- well, let me ask

1 you a question. Ma'am, are you familiar with what a
2 prescription monitoring program is?

3 A. Are you referring to, like, the Casper system?

4 Q. Well, what's the Casper system?

5 A. Where -- it's like a nationwide data bank that keeps
6 track of your prescriptions so that you can't get more than
7 one a month filled.

8 Q. Okay.

9 A. Is that --

10 Q. Similar to that. Virginia has a prescription monitoring
11 program. Are you familiar with who looks at those data bases
12 when thinking about writing prescriptions?

13 A. Yeah, your doctor.

14 Q. Okay.

15 A. You know, yeah.

16 Q. And did Dr. Smithers ever talk about the fact that he
17 would check a data base such as that while you were a part of
18 his practice?

19 A. I don't remember him mentioning it.

20 Q. Okay. I want to direct your attention to page 74 of your
21 patient file.

22 MR. LEE: Ms. Vogt, if you could blow up this
23 portion right there, please.

24 BY MR. LEE:

25 Q. So, ma'am, this is a history of your prescriptions.

1 Looking at -- looks between December of 2014 and through
2 February of 2015. Does that look like what that is?

3 A. Yes.

4 Q. Okay. And it also lists the doctors that you'd been
5 getting prescriptions from, both there and on the next page
6 we'll see in a minute. But it references that you've been
7 getting prescriptions from a doctor in Carthage, Tennessee; is
8 that correct?

9 A. Yes.

10 Q. And that you got prescriptions from Dr. Smithers in
11 Martinsville, Virginia; is that correct?

12 A. Yes.

13 MR. LEE: And if you'd go to the next page, page 75,
14 please.

15 BY MR. LEE:

16 Q. Then this also indicates you went to a doctor in
17 Washington D.C.

18 A. Yes.

19 Q. Okay. And then these are all the different pharmacies
20 that you'd had to fill prescriptions at between 2014 and
21 December of 2015. Does that look like the pharmacies that
22 you'd been using?

23 A. Yes.

24 Q. Okay. So Dr. Smithers knew that you had had to go to
25 Chattanooga, Tennessee, to fill a prescription?

1 A. Yes.

2 Q. How far is Chattanooga from Eastern Kentucky where you
3 were living -- or West Virginia?

4 A. I think probably about five or six hours from Pike
5 County, Kentucky.

6 Q. Okay. Did you also have to go to a pharmacy in Richmond,
7 or Dumfries to fill a prescription?

8 A. Yes.

9 Q. And then, obviously, Buffalo, West Virginia, and
10 Jeffersonville, Indiana; is that correct?

11 A. Yes.

12 Q. How far is Jeffersonville, Indiana, from Martinsville?

13 A. It's right on the line of Kentucky and Indiana. So from
14 Pike County, I think it's probably about three hours. I mean,
15 I should remember that because I'd went so many times. But
16 when you're heavily medicated, it's hard to remember things.

17 Q. Okay. So at least in December of 2015, Dr. Smithers knew
18 you'd travelled everywhere from Richmond, Virginia, to
19 Chattanooga, Tennessee, to fill your prescriptions; correct?

20 A. Yes.

21 Q. And that you'd had to travel everywhere from Washington
22 D.C. to Carthage, Tennessee, to get prescriptions; is that
23 correct?

24 A. Yes.

25 Q. Where is Carthage, Tennessee?

1 A. It's -- that was on the border of Tennessee and Georgia.

2 Q. Okay. How far was that from Pike County, Kentucky?

3 A. It's about the same distance. It's Chattanooga. It's
4 close to Chattanooga.

5 Q. Okay. Did Dr. Smithers ever ask you why you had to
6 travel such great distances to get a prescription or to see a
7 doctor?

8 A. No. No, that's just the way things went.

9 Q. Did Dr. Smithers keep normal office hours like a regular
10 doctor would keep?

11 A. The times that I was there, yes, it was -- you know, I
12 mean, you were there a long time waiting. It was like an
13 all-day thing.

14 Q. Did he ever keep office hours late into the night that
15 you're aware of?

16 A. Not that I'm aware of.

17 MR. LEE: Ms. Vogt, if you could put up the map,
18 Government's Exhibit 50, please.

19 BY MR. LEE:

20 Q. Now, this is Government's Exhibit 50. And there's
21 Martinsville (indicating). Can you find where you were living
22 during this timeframe on the map and circle that.

23 A. Yes. Right here --

24 Q. If you'd touch the screen, it should allow you to draw,
25 make a circle.

1 THE COURT: You may need to turn that on, Madam
2 Clerk.

3 No. No. On her screen.

4 MR. LEE: So that she can mark it up.

5 THE COURT: So that she can mark it.

6 No, you have to punch on her screen up in the
7 left -- right-hand top.

8 THE WITNESS: Okay. It did something there.

9 Right there on P --

10 MR. LEE: Yeah.

11 Okay. So where that green -- if you could make it a
12 little bit bigger so the jury can see. You can even circle
13 it. There you go.

14 BY MR. LEE:

15 Q. So that's where you were living in the Pikeville area?

16 A. Yes.

17 Q. And Kentuckiana Pharmacy that I just circled, is that one
18 of the pharmacies you would routinely go to to fill
19 Dr. Smithers's prescriptions?

20 A. Yes. There and in Poca, and Buffalo, is the ones I more
21 commonly used for when I went to Dr. Smithers.

22 Q. Poca and Buffalo, which are up there that I just circled?

23 A. Yes. And then Olde Virginia Pharmacy that was not too
24 far. It was the closest pharmacy from Martinsville. They
25 would fill the Roxicodones. They wouldn't fill the Opanas,

1 they said they didn't carry 'em.

2 Q. Okay. Do you know how you or Darryl found out about the
3 Kentuckiana Pharmacy in Indiana?

4 A. Darryl found out about it. I don't know if it was from
5 Dr. Smithers or from one of the people that he was sending to
6 Dr. Smithers.

7 Q. Okay. Some of the folks that were part of Darryl's
8 crew -- I'm just going to run through some names, let me know
9 if these were folks that were involved in Darryl's crew or
10 not.

11 Michael Bowe?

12 A. Yes.

13 Q. Jason Bowman?

14 A. Yes.

15 Q. Michael Robinette?

16 A. Yes.

17 Q. Franklin Williams?

18 A. Yes.

19 Q. Earl Blankenship?

20 A. Yes.

21 Q. Michelle Smith?

22 A. Yes.

23 Q. Bryan Harlow?

24 A. Yes.

25 Q. John Greg Harlow?

1 A. Yes.

2 Q. Geneva Bowman?

3 A. Yes.

4 Q. Rebecca Pritt?

5 A. Yes.

6 Q. Is that your mother?

7 A. Yes.

8 Q. Kelly Johnson?

9 A. Yes.

10 Q. Robert Daniels?

11 A. Yes.

12 Q. Samuel Hubbard?

13 A. Yes.

14 Q. Connie Miller?

15 A. I'm not familiar with that name.

16 Q. Okay.

17 A. But, like I said, there was people going that I wasn't

18 aware of.

19 Q. Okay. Pamela Harlow?

20 A. Yes.

21 Q. Do you know a woman named Deborah Reynolds?

22 A. Yes.

23 Q. Was she getting prescriptions? Or was Darryl getting

24 prescriptions in her name?

25 A. I think a couple times he had, yes.

1 Q. You didn't --

2 A. She -- I'm sorry.

3 Q. No. Please continue.

4 A. She didn't have to go to Dr. Smithers's office, so they
5 kind of just did it over the phone. Darryl had her driver's
6 license.

7 Q. Okay. So she never went to see Dr. Smithers?

8 A. No.

9 Q. But still got prescriptions for the opiates?

10 A. Yes.

11 Q. Pain prescriptions.

12 Q. Okay. Do you know Hassel Daniels?

13 A. I'm sorry.

14 Q. Hassel Daniels?

15 A. Doesn't ring a bell.

16 Q. What about Neil Jewell?

17 A. Yes.

18 Q. And Joshua Marion?

19 A. Yes.

20 Q. Were they also part of folks that were going on behalf of
21 Darryl to get pills?

22 A. Yes.

23 Q. I mentioned Connie Miller, you may know her as Rochelle
24 Miller, do you know her?

25 A. It sounds a little bit familiar.

1 MR. LEE: Okay. Ms. Kicklighter, thank you. I
2 don't have any further questions. Please answer any questions
3 defense counsel may have.

4 THE COURT: All right. Cross-examination.

5 **CROSS-EXAMINATION**

6 BY MR. WILLIAMS:

7 Q. Morning, Ms. Kicklighter. How are you today?

8 A. Good morning. I'm fine. How are you?

9 Q. Okay.

10 Now, you had stated, I think prior to that -- let's
11 start out with your medical history here. You first saw
12 Dr. Smithers on September the 10th of 2015; is that correct?

13 A. That sounds about right.

14 Q. Okay. That would have been the first time, I think, in
15 Virginia; does that sound about right?

16 A. The first time was in Beaver, West Virginia.

17 Q. Right. The first time in Virginia would have been
18 September --

19 A. Okay.

20 Q. -- 2015; does that sound about right?

21 A. Correct.

22 Q. Did -- certainly Dr. Smithers took your blood pressure.
23 Did you have a blood pressure 102 over 76; does that sound
24 correct?

25 A. Mm-hmm, yes.

1 Q. Said your heart rate was 92; does that sound right?

2 A. Yes.

3 Q. 98 percent oxygen level; is that correct?

4 A. Yes.

5 MR. LEE: Objection, Your Honor. I don't know that
6 there's any foundation that Ms. Kicklighter would know what
7 the results of any testing that may or may not have occurred
8 or what's in her medical file. There's been no foundation for
9 that.

10 THE COURT: Well, do you know? He's reading
11 something. But do you know what, in fact, the results were?

12 THE WITNESS: I mean, I didn't get the results, but,
13 you know, I about know what my blood pressure and heart rate
14 runs. But, I mean, I wasn't told. It was just routine.

15 BY MR. WILLIAMS:

16 Q. So it was routine that Dr. Smithers would do all of that
17 when you'd go in to talk to him; is that correct?

18 A. Yeah.

19 Q. Okay. And did -- do you recall on that date that you had
20 reported your pain levels? Do you remember what you told him
21 your pain levels were?

22 A. I'm not sure.

23 Q. Let's back up. What was it that you first told him was
24 the reason that you were there asking for pain medicine at
25 that time?

1 A. I told him that I had some nerve damage to a main nerve
2 that goes down into my leg from my back.

3 Q. Okay. And that was the result of some car accidents; is
4 that correct?

5 A. Several different.

6 Q. Okay. What all accidents did you have?

7 A. I mean, I never had no major surgeries or anything like
8 that, just some -- a couple car accidents and --

9 Q. When were those car accidents?

10 A. One was in the early '90s. But I didn't seek medical
11 attention after the accident. And then I had a car accident
12 in 1995.

13 Q. Did you also have an ATV accident?

14 A. Yes.

15 Q. Describe the ATV accident.

16 A. I was going up a hill and the ATV raised up and flipped
17 me off of it.

18 Q. Okay. What kind of injuries did you have as a result of
19 that?

20 A. I didn't go to the hospital. My back hurt for a little
21 while.

22 Q. Okay. Do you recall, did you have any kind of MRI's done
23 during this time?

24 A. I had had some testing done to try to figure out what was
25 making my leg hurt. And that's when I was told that it was

1 nerve damage.

2 Q. And you had some nerve damage in your leg. Do you recall
3 what you told Dr. Smithers was wrong with you on September the
4 10th, 2015?

5 A. I'm sure I told him that my back, lower back, and nerve
6 damage.

7 Q. Okay.

8 A. That's -- that's kind of what you told all the doctors
9 to...

10 Q. Okay. Now, with respect to this, you told -- did you
11 tell Dr. Smithers you had had an MRI done?

12 A. Yeah. I've had several MRIs done, especially in the
13 state of Florida. Because when you went to a pill mill there,
14 they required you to have an MRI. Usually you could go down
15 the street and get one, so.

16 Q. And Dr. Smithers told you you were going to have to
17 provide an MRI, didn't he?

18 A. Yeah, after a few visits.

19 Q. Okay. And he didn't tell you that the very first visit?

20 A. Not that I can recall, no.

21 Q. You're absolutely certain of that, that he didn't tell
22 you on the very first visit that you needed to have an MRI?

23 A. Not that I recall.

24 Q. Okay. Did -- so when you went to Dr. Smithers, you had
25 stated earlier that you didn't really need the pain medicine;

1 is that right? That you were an addict seeking it?

2 A. Yeah.

3 Q. Okay. You never told Dr. Smithers that, did you?

4 A. No.

5 Q. Okay. You went in pretending like you had all these
6 injuries, didn't you?

7 A. Yeah. I mean, I knew what to tell the doctors, you know,
8 that your back was hurt.

9 Q. And you knew it because you had done it before, hadn't
10 you?

11 A. Yes.

12 Q. Okay. You had been able to go through and you'd fooled
13 several doctors, hadn't you?

14 A. Yes.

15 Q. Okay. You went through and you had a series -- and you
16 knew how the system worked, didn't you?

17 A. Yes.

18 Q. Dr. Smithers was a good, caring doctor, wasn't he? He
19 cared about you, didn't he? Took time to meet with you. Took
20 time to ask you about your problems.

21 MR. LEE: Objection, Your Honor. I don't know that
22 he's allowing the witness to answer.

23 THE COURT: You can't ask, sir -- ask multiple
24 questions. You need --

25 MR. WILLIAMS: I'm sorry, Your Honor.

1 THE COURT: You need to ask one question at a time,
2 please.

3 BY MR. WILLIAMS:

4 Q. You knew what to tell doctors when you went in, didn't
5 you?

6 MR. RAMSEYER: Your Honor, he never gave her the
7 chance to answer whether he was a caring doctor.

8 THE COURT: Well, I think he's withdrawn that
9 question.

10 MR. WILLIAMS: I'll withdraw that question,
11 Your Honor.

12 BY MR. WILLIAMS:

13 Q. You knew what to tell doctors when you went in, didn't
14 you?

15 A. Right.

16 Q. Okay. Now, did -- on that visit, you indicated you had
17 chronic back pain; does that sound correct?

18 A. Yes.

19 Q. Okay. And do you recall whether you told him it was
20 suddenly or whether it worsened or not?

21 A. I told him that the pain was getting more common.

22 Q. Okay. Did you tell him that there was shooting pains and
23 tightness and numbness?

24 A. Yeah, that's -- you know what to mark on the papers to --
25 yeah.

1 Q. Okay. So you lied at that point; right?

2 A. No, I wouldn't say lied, no, because my leg did hurt.

3 Q. So you had a legitimate pain?

4 A. Not to receive 40 milligrams of opiates three times a
5 day, no, I didn't have that kind of pain.

6 Q. Okay. But you indicated that that's what you had, didn't
7 you?

8 A. Yeah, I told him I hurt a lot.

9 Q. Okay. And do you remember what you told him your pain
10 level was?

11 A. I probably said an 8 to 10.

12 Q. Okay. And so was your pain level an 8 to 10?

13 A. Sometimes.

14 Q. Sometimes. So you were telling the truth; right?

15 A. No, not the whole truth.

16 Q. Okay. But you just said that it was a pain level of 8 to
17 10, and, yeah, that's what it was.

18 A. Yeah, that's what everybody tells -- you know, that's
19 what -- you know, you tell 'em you've got a pain level, you
20 tell 'em you got chronic back problems, your legs hurt from
21 it.

22 Q. So what you're saying --

23 A. That's what --

24 Q. Are you saying that was a lie or you're saying that was a
25 truth?

1 THE COURT: Wait. You can't talk at once. Did you
2 finish your answer?

3 THE WITNESS: That's what everybody told the doctor.
4 We all said basically about the same thing.

5 BY MR. WILLIAMS:

6 Q. Okay. But my question to you was: Was that the truth or
7 was that a lie?

8 A. At some points my pain was between an 8 and a 10.

9 Q. So your answer is sometimes it was a lie and sometimes it
10 was the truth; is that right?

11 A. No. Sometimes my pain would be at an 8, about an 8 or a
12 10. Sometimes. Not all the time.

13 Q. Okay. Now, Ms. Kicklighter, you stated that you had all
14 of this that you and Mr. Williams -- you pled guilty to this
15 charge in Kentucky. You obviously didn't tell Dr. Smithers
16 any of this, did you?

17 A. What?

18 Q. About that you were selling the pills and all that kind
19 of stuff, did you?

20 A. I don't know if Darryl did or not. But he knew that
21 Darryl was paying for everybody's visits.

22 Q. Okay. That doesn't mean he necessarily knew that Darryl
23 was selling pills or anything, does it?

24 A. You could say that.

25 Q. Now, you never told Dr. Smithers that you were selling

1 pills, did you?

2 A. No.

3 Q. Okay. And why did you not tell him? It's because you
4 knew he was going to -- he would kick you out, didn't you?

5 A. I never mentioned it because he already knew what was
6 going on.

7 Q. Okay.

8 A. I mean, you don't -- you don't have people paying for
9 other people's prescriptions and doctor visits at other kinds
10 of doctors.

11 MR. WILLIAMS: I'll object to non-responsive. I
12 think certainly she's speculating here.

13 THE COURT: I'll overrule the objection.

14 BY MR. WILLIAMS:

15 Q. Now, Ms. Kicklighter, you agree that this was a ruse that
16 was cooked up by -- this was a con that was cooked up by
17 Mr. Williams to go back and forth and get pills.

18 A. Yeah, between him and the people that was going.

19 Q. And when you came in, you were telling Dr. Smithers that
20 you were complain -- that you had severe chronic pain, didn't
21 you?

22 A. Yeah.

23 Q. Okay. And did you ever provide the MRIs that he
24 requested?

25 A. No. He had mentioned it after --

1 Q. He was trying to get you to go get MRIs, wasn't he?

2 A. Yeah. I told him I had medical records, but I never
3 brought them to him or anything like that not the whole time I
4 was going to him.

5 Q. Now, Ms. Kicklighter, you were placed on a high-risk
6 contract in November; is that correct?

7 A. I believe so.

8 Q. Do you recall that?

9 A. Yes.

10 Q. Okay. And you were actually discharged, were you not,
11 from Dr. Smithers's practice?

12 A. Yes.

13 Q. Okay. And when was that, do you recall?

14 A. Maybe in June of 2016, maybe.

15 Q. Okay. And was Darryl Williams kicked out of
16 Dr. Smithers's practice?

17 A. Yes.

18 Q. Who else was kicked out of Dr. Smithers's practice out of
19 that group?

20 A. I can't remember. Maybe Scotty Williams, Franklin
21 Williams.

22 Q. Any others that you know of?

23 A. Not that I can recall.

24 Q. Now, Ms. Kicklighter, did -- you were contacted by the
25 special agents regarding doing that audio tape, were you not?

1 A. Yes.

2 Q. Okay. And they provided you with some money to send; is
3 that correct?

4 A. Yes, some prepaid credit cards.

5 Q. Okay. And then you were going to receive some
6 prescriptions; is that correct?

7 A. Right.

8 Q. Okay.

9 A. There were four or five people at Dr. Smithers's office
10 that day that he needed payment for.

11 Q. Okay. And was it true that you, during that attempt,
12 tried to conceal 25 pills from the agent?

13 A. No. That -- no, that wasn't on that day.

14 Q. That never happened?

15 A. It did happen, but not on that day. That day was just a
16 phone call on July the 19th, 2016.

17 Q. So it would have been a few days later that you did try
18 to conceal 25 pills from the agent; is that correct?

19 A. Yes.

20 Q. Okay. Now, Ms. Kicklighter, how many times did you go
21 back and forth to Dr. Smithers? Is it safe to say you had --
22 you visited on 9-10; is that correct? Does that sound right?

23 A. September, yeah.

24 Q. Okay. Then on November the 5th of 2015?

25 A. Yes.

1 Q. Okay. December the 2nd, does that sound like a correct
2 date?

3 A. Maybe. I know there was a couple months that I didn't
4 have to go. He mailed the prescriptions.

5 Q. Okay. But there were several prescriptions that were
6 gone. Every time you went, did you fill out a pain form?

7 A. I believe so, yeah. He had papers to fill out.

8 Q. And on those pain forms, did you -- what you filled out,
9 you indicated you had severe pain; is that correct?

10 A. Yes.

11 Q. Okay. On July the 5th, 2016, you said you had a pain
12 level of about 8?

13 A. Mm-hmm.

14 Q. Would that sound typical?

15 Okay. And June the 6th, it said you had a pain
16 level of about 9, at worst; does that sound correct?

17 And all of those times, what -- what were you
18 indicating as far as the medicine, how it was helping you; do
19 you recall?

20 A. I didn't receive the Roxicodones the whole time.

21 Q. Okay.

22 A. But I did receive the Opana 40s the whole time.

23 Q. But if you were saying on July the 5th that your relief
24 level was 100 percent, does that sound like what you would
25 have answered?

1 A. Probably so.

2 Q. Okay. And on June the 6th, you said your relief was 90
3 percent.

4 A. I mean, that's -- I mean, I don't recall exact numbers,
5 but...

6 Q. Okay. Was that true? Was the medicine helping you at
7 that point?

8 A. That kind of medicine, such a strong pill, you know,
9 three of them a day, you didn't feel a whole lot of anything.

10 Q. Okay. But you were indicating to Dr. Smithers that his
11 treatment was helping you, did you not?

12 A. Yes.

13 Q. Okay. And was that a lie?

14 A. That was an uninformed observation. I know -- what I
15 know now compared to what I knew then, the medicine was
16 hurting me more than it was helping me.

17 Q. Your involvement with Darryl Williams got you in a lot of
18 trouble, did it not?

19 A. Yes.

20 Q. Darryl conned you, didn't he?

21 A. No.

22 Q. He didn't?

23 Now, when you said you first went to Dr. Smithers,
24 you said that he had -- it was just him, I think, in the
25 office; is that right?

1 A. Yes.

2 Q. Okay. And as he progressed, he began to hire staff as
3 time went on, did he not?

4 A. No. He hired one guy, Wendell. Sometimes his wife would
5 come in the office and take up -- there was actually a time
6 that Darryl went in the office and was taking people's
7 paperwork for him and helping Dr. Smithers because he would be
8 by his self.

9 Q. Was there a time when Peter Bodai was working there? Do
10 you recall Peter Bodai?

11 A. I don't recall. The only one I recall is Dr. Smithers,
12 Wendell, and Dr. Smithers's wife. I don't recall her name
13 though.

14 Q. Dr. Smithers did pill counts? Or Wendell did, didn't he?
15 When you would come in?

16 A. No.

17 Q. He never did a pill count on you?

18 A. I mean, he may have. But it wasn't -- it wasn't a
19 regular thing.

20 Q. Okay.

21 A. Not that I can recall.

22 Q. Okay. You don't recall?

23 A. I was -- I mean, during this time I was always high,
24 really high.

25 Q. Okay. So it's fair to say you don't remember a lot

1 during that period?

2 A. I don't remember if they were counting pills or not.

3 Q. Okay.

4 A. I think towards the end maybe they were. And towards the
5 end he did start to do drug tests.

6 Q. Okay. They were doing -- Wendell was doing the drug
7 testing; right?

8 A. Right.

9 Q. You would have to go in and take that test?

10 A. Mm-hmm.

11 Q. And you tested positive for cocaine. And when you did,
12 what happened? What did Dr. Smithers do?

13 A. I was discharged. Some of the other people that tested
14 positive for cocaine, they didn't get discharged.

15 Q. Okay. Who was that?

16 A. But Darryl and I did.

17 Q. Who didn't get discharged?

18 A. I think Michael Bowe.

19 Q. You think? Or you know?

20 A. I know there was -- there was a couple that -- because we
21 had talked about it why somebody -- you know, one person got
22 discharged and the other person didn't.

23 Q. Most everybody within Darryl Williams's group got
24 discharged at some point, did they not?

25 A. Yeah, I think so, after -- yeah.

1 MR. WILLIAMS: May I have just a moment, Your Honor?

2 BY MR. WILLIAMS:

3 Q. Ms. Kicklighter, one thing I think Mr. Lee had brought up
4 was that you tested positive on 6-6 of '16, does that sound
5 correct? For cocaine?

6 A. Mm-hmm.

7 Q. And you were discharged on 7-5 of '16; is that correct?

8 A. Yeah, that sounds about right.

9 Q. Okay. And was that lab result sent off to be confirmed?
10 Is that what --

11 A. I'm assuming --

12 Q. Did you request --

13 A. I'm assuming that he sent it off to a lab.

14 Q. Okay. And did you request it be sent off to a lab to be
15 confirmed?

16 A. No.

17 Q. Okay. But they sent it off to make sure?

18 A. That's what Dr. Smithers told me.

19 Q. Okay. And that was the reason why they waited a month
20 before they discharged you; correct?

21 A. I guess so.

22 Q. And Mike Bowe was discharged about the same time you
23 were, was he not?

24 A. Yeah, it was -- yeah, they -- yeah, I believe so.

25 MR. WILLIAMS: I believe that's all the questions I

1 have at this time.

2 THE COURT: All right.

3 Redirect?

4 MR. LEE: Briefly, Your Honor.

5 **REDIRECT EXAMINATION**

6 BY MR. LEE:

7 Q. Ms. Kicklighter, even though you and Darryl Williams had
8 been discharged, Dr. Smithers was still willing to take your
9 money, wasn't he?

10 A. Oh, yeah. Yeah. It was -- Darryl and him had friendly
11 conversations. Darryl was actually trying to help
12 Dr. Smithers, I think, come up with an investor for -- to try
13 to put in a pharmacy. Business went on as usual, even though
14 we weren't going.

15 Q. And Darryl Williams was still willing to and did, and
16 Dr. Smithers was willing to accept new patients sent by Darryl
17 Williams after both you and he had been discharged, wasn't he?

18 A. Yes.

19 Q. Okay.

20 MR. LEE: LK, page 31.

21 BY MR. LEE:

22 Q. I'm going to show you something, Ms. Kicklighter.

23 On your screen there, do you recognize what that is?

24 A. There's nothing on here right now.

25 Q.

1 MR. LEE: Government's Exhibit LK, page 31.

2 BY MR. LEE:

3 Q. Is that your intake form at Priority Urgent Care in
4 Beckley, West Virginia?

5 A. Yes.

6 MR. LEE: If you could go to the next page, please.

7 BY MR. LEE:

8 Q. And you've signed it there August the 12th of 2015.

9 A. Yes.

10 MR. LEE: And then the next page. Page 33.

11 BY MR. LEE:

12 Q. Signed it again. And that's Dr. Smithers's signature,
13 isn't it?

14 A. Yes.

15 Q. Okay. Ms. Kicklighter, fair to say the majority of the
16 doctors you've been to, have they been shut down?

17 A. Yes.

18 MR. LEE: If you could go to page 86.

19 BY MR. LEE:

20 Q. This is page 86 of your medical records. And it
21 references that you had previously been to a place called the
22 Hope Clinic in Charleston, West Virginia; is that correct?

23 A. Yes.

24 Q. What happened to the Hope Clinic?

25 A. I think I got discharged at the Hope Clinic.

1 Q. What happened to the practice itself?

2 A. Oh, it was shut down. I mean, every pain doctor that
3 I've been to has been shut down.

4 Q. Okay.

5 A. But, actually, at the Hope Clinic, now I remember, that
6 was where the doctor was at that actually showed me the
7 stretching I can do to relieve some pain in my leg.

8 Q. But it got shut down, too, didn't it?

9 A. Yeah. Yeah. Then there was a pharmacy that everybody
10 went to, I can't think of the name of it. It was in
11 Charleston, West Virginia. But it got shut down too.

12 MR. LEE: Thank you, Ms. Kicklighter. No further
13 questions.

14 THE COURT: All right. Anything further?

15 **RECROSS-EXAMINATION**

16 BY MR. WILLIAMS:

17 Q. One final question.

18 Ms. Kicklighter, once again, most of Darryl
19 Williams's patients were discharged; correct? By
20 Dr. Smithers?

21 A. I'm not sure how many.

22 Q. Okay. But a significant number of them, they were
23 discharged; correct?

24 A. I would say, yes.

25 MR. WILLIAMS: No further questions.

1 THE COURT: All right. Thank you, ma'am.

2 You may step down.

3 THE WITNESS: Thank you.

4 (Testimony of Ms. Kicklighter concluded at 10:29 a.m.)

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Donna Prather, CCR, RPR, CCP, CCB

Official Court Reporter for the U.S. District Court Western District of Virginia

REPORTER'S CERTIFICATE

I, DONNA J. PRATHER, do hereby certify that the above and foregoing, consisting of the preceding 56 pages, constitutes a true and accurate transcript of my stenographic notes and is a full, true and complete transcript of the proceedings to the best of my ability.

Dated this 23rd day of May, 2019.

DONNA J. PRATHER, RPR, CRR, CBC, CCP
Federal Official Court Reporter

Donna Prather, CCR, RPR, CCP, CCB

Official Court Reporter for the U.S. District Court Western District of Virginia

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